

DBJ7ROPS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

11 Cr. 176 (CM)

5 JASON ROPER,

6 Defendant.

7 -----x

8 November 19, 2013
9 5:00 p.m.

10 Before:

11 HON. COLLEEN MCMAHON

District Judge

12
13 APPEARANCES

14 PREET BHARARA

United States Attorney for the
Southern District of New York

15 BY: ANDREW BAUER

16 Assistant United States Attorney

17 JAMES NEUMAN

Attorney for Defendant

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(Case called)

(In open court)

MR. BAUER: Good afternoon. Andrew Bauer for the government.

MR. NEUMAN: Good afternoon. James Newman for Jason Roper.

THE COURT: Have a seat everyone.

This matter is on for sentence under docket number S1 11 Crim. 176-01, United States of America v. Jason Roper, Mr. Roper having been found guilty of one count of conspiracy to distribute and possess with intent to distribute marijuana and crack, a class A felony in violation of 21 United States Code, Section 846 and 841 (b)(1)(A). This crime carries a mandatory minimum term of ten years and a statutory maximum of life imprisonment; a mandatory minimum of five years and a statutory maximum of lifetime supervised release; a maximum fine of \$4 million; and a \$100 special assessment;

One count of use of a firearm in furtherance of a crime of violence, in violation of 18 United States Code, Sections 924(c)(1)(A)(iii) and 2. This is also a class A felony, and it carries a mandatory minimum sentence of seven years, to run consecutive to any other sentence, with a maximum term of life imprisonment; a maximum of five years' supervised release; a maximum fine of \$250,000; and a mandatory \$100 special assessment;

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1 One count of conspiracy to commit a Hobbs Act robbery,
2 in violation of 18 United States Code, Section 1951, a class C
3 felony, carrying a maximum 20 year term of imprisonment; three
4 years supervised release; a fine of the greater of \$250,000, or
5 twice the gross gain to the defendant or loss to identifiable
6 victims other than the defendant; and a \$100 special
7 assessment;

8 A second count of the same crime, a class A felony
9 carrying a second count, a mandatory minimum of 25 years'
10 imprisonment, to run consecutive to any other sentence; with a
11 maximum term of lifetime imprisonment; the same five year
12 supervised release; \$250,000, or twice the gross gain or loss
13 fine; and a \$100 special assessment;

14 Two counts of robbery, class C felonies, in violation
15 of 18 United States Code, Sections 1951 and 2, carrying each a
16 maximum of 20 years' imprisonment; three years' supervised
17 release; the same maximum fine of \$250,000, or twice the gross
18 gain or loss on each count; and a mandatory \$100 assessment on
19 each count;

20 And, finally, one count of robbery of a confidential
21 informant -- which I never knew was its own crime. That's a
22 first for me -- in violation of 18 United States Code, Section
23 111(a) and (b). I assume it's a Class C felony. It carries a
24 maximum potential penalty of 20 years' imprisonment; three
25 years' supervised release; the maximum fine the greater of

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1 \$250,000, or twice the gross gain or loss; and a mandatory \$100
2 special assessment. That's \$700 in special assessments.

3 In connection with today's proceedings, I have
4 received and reviewed the presentence report prepared by United
5 States Probation Officer Lydia Ramos dated November 13, 2003.
6 I have a sentencing submission from the government dated
7 November 1, 2003.

8 Where is the other one, Jim?

9 Mr. Neuman, I am told that you submitted something in
10 writing.

11 MR. NEUMAN: I have a copy if you would like, Judge.

12 THE COURT: If possibly you could give it to me --

13 MR. NEUMAN: Yes.

14 THE COURT: -- because we're not able to locate it.
15 though I rather imagine you are going to be saying most of
16 these things to me in any event.

17 MR. NEUMAN: Yes.

18 THE COURT: Just give me a minute.

19 I have previously seen the so-called Bauer letter.
20 That was in the file. What it was attached to was not, but
21 that letter was in the file.

22 OK. All right. Has the government reviewed the
23 presentence record?

24 MR. BAUER: I have, your Honor.

25 THE COURT: Is there anything else I should have seen

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1 in writing from the government prior to today other than your
2 5K letter?

3 MR. BAUER: No, your Honor, although I will note that
4 I attached a letter to my 5K.

5 THE COURT: Yes, there was a letter attached to your
6 5K.

7 MR. BAUER: That's it.

8 THE COURT: OK. And has the government reviewed the
9 presentence report.

10 MR. BAUER: Yes, your Honor.

11 THE COURT: Any additions, deletions or corrections?

12 MR. BAUER: No, your Honor. I will note that I did
13 look at the guidelines calculation. It is a little complicated
14 but it looked correct to me.

15 THE COURT: OK. And does the government make the
16 motion contemplated by its letter?

17 MR. BAUER: Yes, your Honor.

18 THE COURT: All right. Then I will hear you.

19 MR. BAUER: Thank you, your Honor. I will begin with
20 the crime that you didn't know was a crime, which is the
21 robbery of an informant. That was the instant crime that
22 Mr. Roper was arrested upon. All of the other charges were
23 learned at least for the most part during the proffers. So, he
24 got arrested for using what turned out to be a BB gun to arrest
25 what turned out to be a DEA agent or an informant, and based on

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1 that charge he came in and began proffering.

2 Almost instantly he accepted responsibility and at
3 that very first proffer told us about a significant information
4 in terms of historical information that a proffer can give you.
5 He talked about five different murders, murders that he either
6 witnessed firsthand, or murders that he heard about from the
7 people who did the murders. It was based on that
8 information -- and actually it was Ms. Heller who was sitting
9 before you for the last eight hours who proffered Mr. Roper
10 that day. She called me because I was doing the Yonkers gang
11 initiative investigation, and we sat down with Mr. Roper.

12 Now, at that point we had begun to collect information
13 about Mr. Roper, but he quickly filled in all of the gaps and
14 provided significant information about his own criminal
15 history, as well as that of many other people. I think what I
16 would like to stress about the historical information that he
17 provided, which was significant -- and I tried to say this in
18 the 5K letter -- was Mr. Roper is liked or accepted by many
19 different groups in Yonkers. There are factions, there are
20 fault lines between all the different gangs in Yonkers. I know
21 you are most familiar with Newburgh, but it's not so dissimilar
22 to Yonkers.

23 THE COURT: I have some not immodest familiarity with
24 Yonkers, if only because I spent nine years sitting in White
25 Plains.

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1 MR. BAUER: Exactly.

2 THE COURT: But there are other reasons why I am
3 familiar with Yonkers.

4 MR. BAUER: Fair enough. Well, Mr. Roper was able to
5 hang out, sell drugs, borrow guns from the Elm Street Wolves,
6 the Cook Street Gangsters, the Two Guns Up crew from Riverdale
7 Avenue. That was his main crew. Those were all on one side of
8 the aisle there in Yonkers. He was also accepted by the Strip
9 Boys, the main rival to those gangs, and was able to go down to
10 the Schlobohm housing project in southwest Yonkers and hang out
11 there and sell drugs there. That is a rare thing in Yonkers.
12 Because of that, he instantly provided value in a variety of
13 different angles from which our investigation moved.

14 So, in August 2011 -- which was five days after his
15 guilty plea here in this courtroom -- we took down 65 members
16 of the Elm Street Wolves, and the Cliff Street Gangsters.
17 Mr. Roper's information contributed significantly to that.

18 The next year, June 2012, we took down another 23
19 members of the Strip Boys. His information was incredibly
20 significant for that as well.

21 And then I have news, your Honor, that's hot off the
22 presses, meaning it didn't make it into my 5K letter, but on
23 November 6, so less than two weeks ago, we did another
24 take-down in Yonkers. We did a take-down of the Two Guns Up
25 crew -- that's Mr. Roper's crew -- and obviously we relied

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1 heavily on his historical information there. So, it's another
2 11 defendants that we arrested just a couple of weeks ago.

3 Mr. Roper's cooperation is expected to be ongoing. He
4 specifically requested that I ask you to make it a term of any
5 supervised release that his cooperation be ongoing. So, even
6 though I am sure he is sitting there hoping for time served
7 right now, even if you were to give him that, the government --
8 that includes me and all the agents -- have no doubt that Mr.
9 Roper will be available to us as that Riverdale Two Guns Up
10 case continues.

11 I would say, your Honor -- I mean I wrote a pretty
12 detailed 5K letter. I would be happy to answer questions that
13 you have for me -- but I would say that Mr. Roper was a major
14 success as a cooperator in two important ways. Number one --

15 THE COURT: Could I speak to Mr. O'Neil for one
16 second?

17 MR. BAUER: Sure.

18 THE COURT: OK. Keep going.

19 MR. BAUER: He was a major success. What I mean by
20 that is obviously cooperators can be successful if they testify
21 and help get a conviction. Mr. Roper didn't have that
22 opportunity. He was incredibly successful though first in the
23 sheer volume, quantity of information that he provided, it's
24 the very nature of the substantial assistance that we look for.
25 Hopefully that message has come across to you to your Honor.

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1 But the other reason he is a success is what he has been saying
2 to me for the last two years, which is that he has turned his
3 life around, his commitment to leaving the street life. I know
4 that you hear that all the time; we hear that all the time.

5 THE COURT: All the time.

6 MR. BAUER: We hear that all the time. I can only
7 tell you from my experience, and that is it had to be more than
8 just contrived for my benefit and for your benefit here today.

9 He has been consistent. He has called me. I yell at
10 him. He gets my phone number, and he has called me to talk
11 about his job opportunities and his schooling. There is such a
12 genuine interest in him to move his life forward, and that's
13 the reason why I attached his letter to me. Again, I yelled at
14 him for writing me that letter, because as we tell every
15 cooperator, you are creating 3500 if you write me a letter.

16 But I guess my message to you is at least I believe
17 it. I think it's more than just lip service that a defendant
18 being sentenced tells you, or in this case would tell me, just
19 the consistency and the duration of the message.

20 So, I think that's kind of a success. I don't want to
21 make the process of cooperation more than it is, but I guess I
22 will admit that I do hope that when we sit there with somebody
23 who was committed to a life of crime that he was for so long,
24 that he would see the value in turning his life around. Not
25 every cooperator does. But I think Mr. Roper did and has since

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1 the outset.

2 And I just offer it to you, your Honor, because I know
3 you hear it from that table all the time. And I can't promise
4 you anything about what Mr. Roper is going to do. I am just
5 giving you my impressions. Because I think it's important, and
6 I haven't -- I mean I can't tell you -- I can tell you, there
7 are 14 Yonkers cooperators, some of whom have been sentenced,
8 and I don't stand up here and say that for everybody.

9 So, I am happy to answer any other questions that you
10 have. Obviously, Judge, I don't want to sit down without at
11 least underscoring the serious nature of his offense conduct.

12 THE COURT: Yikes.

13 MR. BAUER: It's impressive in its breadth.

14 THE COURT: Indeed.

15 MR. BAUER: And in fact it's not just selling drugs.
16 It was the robberies. And I think to bring it back to how he
17 first came to the robbery of the CI, the DEA CI, it's obviously
18 because he was living a life of robberies. And obviously it's
19 incredibly serious conduct, and it's one that I described in
20 some length in the five K letter. So with that, I will offer
21 myself for any questions that you may have. Otherwise, I will
22 defer to Mr. Neuman and Mr. Roper.

23 THE COURT: OK.

24 MR. BAUER: Thank you.

25 THE COURT: Mr. Neuman, have you reviewed -- first of

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1 all, is there anything else I should see in writing from you?

2 There are some letters from the family, I saw.

3 MR. NEUMAN: That's it.

4 THE COURT: I went right to them. I figured you would
5 say everything else, and so I went to them.

6 MR. NEUMAN: Yes, Judge, that was a good decision.
7 That's all I have submitted in writing.

8 THE COURT: OK, fine. And have you reviewed the
9 presentence report and gone over it with Mr. Roper?

10 MR. NEUMAN: Yes, I have, and we do not have any
11 objections.

12 THE COURT: OK. So, make your pitch. You can assume
13 that I am going to grant the government's motion. OK? Let's
14 assume that.

15 MR. NEUMAN: Judge, there are many people for whom I
16 appear on behalf at sentencing, and this process by rote is
17 easy, the factors are black and white, and occasionally I have
18 someone like Mr. Roper where I struggle a little bit to put it
19 into words because I'm trying to convey something a little bit
20 more emotional than I have witnessed; and to some degree this
21 is what Mr. Bauer has already said, but I will try not to be
22 too repetitive.

23 THE COURT: That's OK.

24 MR. NEUMAN: When I first met Mr. Roper, and I saw the
25 charges he was presented with, I thought, well, I had somewhat

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1 the same reaction you did, it sounded like a very legal theory,
2 I was excited maybe I could come up with something here, a new
3 legal issue. And he explained to me how it was really a BB gun
4 too, which we hadn't verified. I was not pushing him in any
5 direction.

6 And, you know, he immediately -- I think it was really
7 immediately -- said that he wanted to cooperate. And then the
8 conversation went on, and as I spent some time with him, I
9 explained to him all the additional crimes that he would be
10 admitting to, that as far as we knew the government knew
11 nothing about. And that shook him a little bit. He was
12 certainly not -- you know, he didn't just listen to it
13 blithely. But he listened to it, and he decided that he was
14 going to take what I would call a leap of faith in me, what I
15 was advising him to do, a leap of faith in the government and
16 the whole system.

17 And when he made that decision, to me it's really a
18 life changing decision, not just because there are all the
19 additional charges he was admitting to, but because of the
20 scope and the breadth of the number of people that he was going
21 to have information on and inform about. Because it was really
22 a major break with a lifetime of associates, and that's not an
23 easy thing to do, but he did that.

24 What I learned about him in the next few years is that
25 he was not cooperating solely to reduce his sentence; he was

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1 really doing it because he generally wanted to turn his life
2 around. And I agree with Mr. Bauer, we hear this all the time
3 from people, but there is evidence here that makes it real to
4 me.

5 You have seen the letters from the family members.
6 They talk about how he has been asking them to help him find
7 colleges and jobs and things like that. He has talked to me
8 about Monroe College in particular which is in New Rochelle,
9 and how he thinks he can get financial assistance. There are
10 concrete plans that are being made. And Mr. Bauer has talked
11 about how he badgered him. Well, he badgered me too. And I
12 say that, I mean that in a loving way. Really the worst thing
13 I can say about Mr. Roper is he has been a real nudge in terms
14 of calling and asking about things, but never to complain about
15 what is going on in the case, but just because he wants to put
16 his life together.

17 So, I have heard many, many conversations about what
18 he is going to do when he gets out. And this goes back to the
19 beginning. He knew this was going to be a very long process
20 because of how much knowledge he had.

21 Now, as the result of the scope of his knowledge, I
22 think it is important to say that he really faces I think risks
23 and danger above and beyond what many cooperators do, because
24 there are so many different types of groups involved. Last
25 week at the MCC he was assaulted by someone else, I think his

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1 name is D, I've forgotten the last name.

2 THE COURT: I have it.

3 MR. NEUMAN: You have it. But I know there was a
4 separation, and no one is blaming anybody. Things happen, but
5 this was an explicit retaliation for his act as a cooperator.
6 And I mention it to you because I think it underscores that
7 when you are in a federal jail, no matter what the precautions,
8 there is danger, and no matter how well intentioned everyone is
9 at preventing the danger. I think he faces more danger than
10 most people.

11 Now, while he was at the MCC he also got a GED; he
12 completed two drug programs. So, this is more concrete
13 evidence that he really is making an attempt to be productive.

14 I have also argued in my submission that I think that
15 while he does have an extensive criminal history, a lot of that
16 I believe can be attributed to conditions that no longer exist.

17 He grew up in difficult circumstances. His father was
18 in and out of prison, was a heroin addict. Mr. Roper was
19 diagnosed with ADD and some learning disabilities, was on
20 medication for a while which helped the behavior, but then he
21 was taken off the medication, the behavior worsened. He
22 developed a daily drug and alcohol habit by the time he was 16
23 years old. And at this point he has completed programs, he is
24 a more mature person, and I think there is much less of a risk
25 that he is ever going to commit a crime again.

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1 The other factor that I think is important is that he
2 has a real history of employment. Even while he was committing
3 crimes and under a daily drug habit, he worked in a variety of
4 jobs. He worked at places like K-Mart, Stop N Shop, YMCA,
5 Nordstrom's. And I have spoken to the manager at Nordstrom's
6 personally, and she cannot be here today. I have her phone
7 number, and she is willing to be called. I made available the
8 probation officer who did not see fit to call --

9 THE COURT: I understand. She may find herself up
10 against other things, but I understand that she wants to give
11 him a job.

12 MR. NEUMAN: She wants to give him a job. And the way
13 she put it to me is that they were eager to have him back. You
14 know, she knows what the case is about, but she knows him, and
15 she knows that he's a very good worker. And another factor --
16 which I think is hard to convey adequately -- is that Mr. Roper
17 is really a nice person. By that I mean he is affable, he is
18 pleasant, people want to help him. We're all rooting for him
19 here, whatever the sentence is. He is a terrific family
20 member. His mother and his sisters are here today. His other
21 sister could not be here, and his five year old son wanted to
22 be here but is sick today. He talks to me frequently about how
23 he wants to cultivate that relationship. They see each other
24 on a weekly basis. And the letters show me that Mr. Roper is
25 very important to his family.

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1 Probation has recommended a sentence of 60 months. He
2 has done virtually three years. I think that taking all of the
3 factors into consideration, I think that a sentence of time
4 served would be more than adequate and would be just.

5 THE COURT: Do you have anything you want to say to
6 me, Mr. Roper?

7 THE DEFENDANT: Yes. Your Honor, before I start I
8 just want to say that everything I'm about to say you might
9 have heard a thousand times, someone is back with a new story
10 on a later date. Not my case.

11 My situation is very different, and everything I say
12 is coming from my heart, and I hope that you can believe me
13 enough to know that I have changed, and over the last three
14 years I have become a more and responsible man with strong
15 morals and plans for better my future.

16 The last time I was in your courtroom was on August 4,
17 2011. On that day I pled guilty to a seven count superseding
18 information. That pushed the number of years that I was facing
19 up a lot. Since then, Mr. Bauer, Mr. Neuman and I have came
20 such a long way down my road towards recovery.

21 First, I want to thank you, your Honor, for responding
22 to my letter and showing me that I was in good hands. Also, I
23 want to thank Mr. Bauer and my lawyer for believing in me and
24 giving me a chance to change my life around, as well as giving
25 me a chance to right my wrongs.

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1 Your Honor, with respect to your courtroom, I would
2 like the record to show that I take full responsibility for my
3 actions in breaking society's laws, and I am truly sorry for
4 all of the families that may have been affected by my
5 wrongdoing.

6 In light of the fact that my crimes are violent, I
7 want you to know that no one was ever hurt physically. Also,
8 your Honor, my decision to cooperate played a big part because
9 of my five year old son, Jason Roper, who means the world to
10 me. I am still active in his life. I don't want him to grow
11 up with a father, take to the streets and turn out like the old
12 me.

13 I let my loved ones down. Being that I was locked
14 away for three years and not in his life on a day to day basis,
15 it hurts so bad when he asks me when am I coming home because
16 he wants to watch a movie with me, or he wants to bake a cake
17 for me.

18 Your Honor, not only to myself but to my family I made
19 a promise never to commit another crime and come back to this
20 place and not be a part of their life.

21 Again, being locked up for so long opened my eyes to
22 so many things. First, just knowing that I don't have any two
23 things and my family is all I have. Your Honor, with respect
24 to your courtroom and you, I would like to thank my mother, my
25 son and my sister for showing me so much love and support, just

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1 knowing that somebody is waiting for me to come home and who
2 cares about my well being. When I do get out of this place, I
3 am going to try my hardest to make up for lost times and make
4 newfound memories as I progress.

5 With that said, I would like to tell you my plans for
6 when I get out of here. First, my older sister pulled a few
7 strings to get me my old job become at Nordstrom's cafe, where
8 I plan to work as many hours as the manager permits me to.

9 Second, since I have been at the MCC I have worked
10 hard to earn my GED, and once I received a copy of my passing
11 score, thoughts of going back to school and furthering my
12 education, has never made me happier to want to attend school
13 and try to get my Associates Degree and go on for another two
14 years in hopes of getting a Bachelor's degree in applied
15 science and culinary arts field.

16 After having my sister and the drug facility counselor
17 look up numerous schools, I feel like Monroe College is more
18 convenient to where I work and live, and I strive to some day
19 be the head chef for somebody's kitchen and maybe even my own
20 restaurant.

21 I know that nothing happens overnight, but with hard
22 work and dedication, and with support from my family, I know
23 that I can achieve my goals and try to help as many people as
24 possible and direct their lives down the right paths.

25 Finally, your Honor, I pray that you believe I deserve

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1 a second chance and not only live in this society but being a
2 role model and to my son and to others.

3 Thank you for giving me a chance to express my
4 feelings before your Honor.

5 THE COURT: Have a seat. Well, I do grant the
6 government's motion. I can without exaggeration characterize
7 your cooperation as truly extraordinary. So, the only question
8 is how much time.

9 There are times when I wish that I was sitting at the
10 Northern District of Illinois, because in the Northern District
11 of Illinois they have a policy that they abide by. Everybody
12 gets, and you know in advance you are going to get a certain
13 percentage, it's always the same percentage no matter who the
14 defendant is. If you get the 5K letter, the most you can get
15 off is a certain percentage of your time, and it takes the
16 guesswork out of it for the judge. And it reflects a policy in
17 favor of substantial punishment for cooperators. They get a
18 break but they don't get the kinds of sentences that we so
19 frequently give in this District.

20 You have an extraordinary record, and you have an
21 extraordinary panoply of charges to which you have pleaded
22 guilty. I appreciate that the government would not have been
23 able to lodge all of these charges against you without either
24 you or someone else telling them about all of these things.
25 The fact that you are the one who told them is definitely in

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1 your favor.

2 You're right, I have heard it all before. I have. I
3 have heard it most recently in a 65 defendant case involving
4 gangs in Newburgh. I have had Yonkers gang cases. I have had
5 gang cases in Mt. Vernon. I have had gang cases pretty much
6 everywhere. And, yes, I hear it all the time, and all the time
7 I am disappointed. Every time any act of generosity or mercy
8 has a tendency to get thrown then back in my face. Certainly
9 in the Newburgh case -- which is my most recent case -- I have
10 become accustomed to coming into the courthouse once a week and
11 seeing that somebody who got a reduced sentence for some reason
12 or other, and who told me that he had turned his life around
13 and seen the light, and he was on the straight and narrow, is
14 back for a violation of supervised release. So, I have become
15 somewhat cynical when people stand up and tell me what you have
16 so eloquently and so beautifully, and so fulsomely told me. I
17 have become a believer that actions speak louder than words,
18 and altogether too often the actions don't measure up to the
19 flowery promises.

20 The government has given you an extraordinary
21 testimonial. I rarely hear an assistant United States attorney
22 openly plead for a vast reduction in sentence and argue the
23 possibility of time served. It almost never happens. And I
24 can understand why, because the value of the cooperation that
25 you have given and continue to give is at tremendous risk to

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1 yourself.

2 I accept that you have diligently made plans for when
3 you get out, and they include being a good father to your son,
4 which apparently you have continued to be even while
5 incarcerated, which counts for a lot with me, because I'm tired
6 of seeing children abandoned by their parents and especially by
7 their fathers. I'm sick of it.

8 And you lined up a job and you have plans for school.
9 Let me ask you a question, Mr. Roper, what happens if things
10 fall apart? What happens if the people in the personnel
11 department at Nordstrom's tell the manager that notwithstanding
12 what she wants to do, they're not going to let you come back
13 because of these substantial convictions? What happens if you
14 have a hard time finding a school that will take you? You are
15 going to drag that record around like a very, very long tail on
16 a dog. What are you going to do? What are you going to do
17 when you run into a roadblock and your beautiful plan?

18 THE DEFENDANT: Your Honor, under no circumstances
19 will I go back to my old life. I'm not going to lose hope, and
20 I know that eventually if things don't go as planned, then
21 there is something out there for me.

22 I know I also have looked up other programs to help
23 felons get jobs, people with bad records. I also have been
24 told that I can look in the Department of Construction, but I
25 don't know how good would that be. I know that I'm not going

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1 to go back to my old life. I know that I'm not going to commit
2 any crimes. I know the easiest way for me to get money is for
3 me to rob somebody, and I am never -- I am never going to rob
4 nobody again. I'm never going to do anything that's going to
5 land me back in front of you, not even a violation.

6 I am sorry that so many other people have let you
7 down, but then again I don't know if their situation was as
8 mine was, but I have no plans for failure for the future. And
9 to my understanding, I know that the schools accept people. I
10 know that there are people out there to help people like me in
11 the situation that I am in. And I know I have a bad record,
12 but I --

13 THE COURT: You have a terrible record.

14 THE DEFENDANT: No, I'm talking about my criminal
15 history. I am not talking about the charges I had copped out
16 to. I don't have any felonies -- well, prior to this case I
17 didn't have any felonies; I had just like minor misdemeanors.
18 But I can tell you personally that if you see me again, it will
19 probably be to get off of probation early or something in that
20 nature, because I don't plan on reoffending, your Honor.

21 THE COURT: Well, hope springs eternal, Mr. Roper, so
22 I'm going to give you the benefit of the doubt, and I'm going
23 to let you give it a try.

24 I'm going to send you home. But, Mr. Roper, if you
25 break my heart, if you disappoint me, if they bring you back to

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1 me, don't count on getting anything less than the maximum I can
2 give you no matter how infinitesimal the violation, because I
3 have warned you, I have told you straight, I'm tired of being
4 disappointed.

5 THE DEFENDANT: I'm not coming back, your Honor.

6 THE COURT: If you can overcome this, if you can make
7 a go of it on the outside without going back to the street,
8 more power to you; I will be so happy. I am looking at your
9 mother, who does not deserve what she has undoubtedly gone
10 through. And I am a mother, and I will tell you that you owe
11 her a lot. You have a lot to make up for, and you better do
12 it, because not only will I be angry as a judge, but I will be
13 angry as a mother if you show up back here again.

14 I have reviewed the presentence report. I accept and
15 adopt as my finding the description of the offense and the
16 offense conduct and the calculation of the guidelines which I
17 agree to be correct.

18 It is obviously a very complicated guideline
19 computation. The total offense level is 30 and the defendant's
20 criminal history category is hard to find.

21 MR. BAUER: Paragraph 97.

22 THE COURT: It's Criminal History Category IV. Seven
23 criminal history points.

24 I accept and adopt as my findings probation's report
25 about Mr. Roper as out beginning at the paragraph 101 of the

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1 presentence report.

2 I grant the government's motion pursuant to Section
3 5K1.1, and I will sentence the defendant without regard to the
4 mandatory minimum sentences that are otherwise applicable to
5 him.

6 I appreciate the good work done by probation officer
7 Ramos, and I was initially inclined to take her recommendation.
8 In the end I'm going to take the chance on Mr. Roper that's
9 even greater than the chance that probation officer Ramos has
10 given, partly because what she recommends -- which is a five
11 year sentence -- is not significantly longer than the sentence
12 he has already had. He has essentially done a three year
13 sentence already.

14 Sir, will you stand. Under docket number S1 Cr.
15 176-01, this is a downward departure sentence by virtue of the
16 defendant's substantial cooperation, which has been truly
17 extraordinary and has proven a plethora of results.

18 I hereby sentence you on each of Counts One through
19 Seven to time served, to be followed by a period of five years'
20 supervised release on Count One, Two and Four; and three years'
21 supervised release on Counts Three, Five, Six and Seven, which
22 makes for a term of five years' supervised release.

23 Defendant has no ability to pay a fine. He does have
24 to pay a \$700 special assessments, which is due and payable
25 immediately.

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1 OK. So, for the next five years, Mr. Roper, you are
2 under my thumb. You will report to a United States probation
3 office this week. By Friday you have to have reported to a
4 United States probation office. Mr. Neuman will tell you where
5 to go. You are going to be assigned a probation officer. You
6 are going to meet with that probation officer on a regular
7 basis. You can't miss a meeting. You are going to do
8 everything that probation officer tells you to do. If the
9 probation officer tells you not to do something, you can't do
10 it, no questions asked, you simply obey. Do you understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Let me tell you what the general rules
13 are:

14 You cannot commit another crime. There is no margin
15 for error. Don't jay walk. It doesn't matter if the crime is
16 serious or is a misdemeanor or violation. It doesn't matter if
17 the crime is federal, state or local. It doesn't matter, you
18 cannot commit another crime.

19 You cannot illegally possess a controlled substance.
20 If you have drugs on your person, you had better have gotten
21 them from a licensed pharmacist at a drug store like, you know,
22 the Walgreen's or the CVS, pursuant to a prescription from a
23 doctor.

24 You have to participate in a program approved by the
25 United States probation office, and that program will include

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1 testing to determine whether you have reverted to using
2 controlled substances. I authorize the release of available
3 drug treatment evaluations and reports to the substance abuse
4 treatment provider as approved by your probation officer.

5 You have to contribute to the cost of services
6 rendered in an amount to be determined by your probation
7 officer, based on your ability to pay or the availability of
8 third-party payment. And you also have to participate in an
9 alcohol aftercare program, again under a copayment plan if
10 possible, and that will include testing by a Breathalyzer at
11 the discretion and direction of your probation officer.

12 You have to give your probation officer a sample of
13 DNA, genetic identifying material, which will be put into
14 criminal databases so that you will be more easily traceable in
15 the future.

16 You have to obtain and maintain legitimate and
17 verifiable employment. I hope that if I show up at Nordstrom's
18 in White Plains at the mall that you are at the coffee shop.
19 But if that doesn't work out, you have to find another job or
20 go to school. That wouldn't be such a bad thing for you to do.
21 Do both. Keep you busy and off the street.

22 You cannot associate with people who been convicted of
23 crimes, and you cannot be found in places where criminal
24 activity is being planned or carried out. You can't have any
25 affiliation or contact with any known member of any street

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1 gang. Now, I don't care if somebody was your best friend from
2 kindergarten, or is your cousin, or is someone that you have
3 some other reason in the world beside gang affiliation to love.
4 You can't see that person. You can't talk to that person. You
5 can't be in touch with that person. You can't do it unless --
6 and I don't imagine it's going to happen -- but unless there is
7 something about your cooperation with the government that will
8 require you.

9 Your probation officer has to know where you live all
10 the time, and your probation officer has to know where you work
11 all the time. And if you are going to change either one of
12 those things, you have to tell the probation officer ten days
13 in advance, because the probation officer, among other things,
14 for the next five years has the power to say, no, you can't
15 move to that apartment because maybe the probation officer
16 doesn't think it's a suitable place; maybe there are lots of
17 gang members who are living around there, and the probation
18 officer wouldn't want you around there. That's the kind of
19 control the probation officer will have over your life, and you
20 have to accept that.

21 If there is an emergency and you are required to leave
22 the premises where you work, or the premises where you live, if
23 there is a gas leak or a fire, or you can't stay in your
24 apartment, you have to notify your probation officer. Within
25 48 hours you have to call the probation officer.

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1 You have to submit your person, your residence, your
2 place of business, your vehicle, or any other premises that are
3 under your control, to a search without a warrant if your
4 probation officer has a reasonable belief that contraband or
5 evidence of a violation of the conditions of your release may
6 be found. That search must be conducted at a reasonable time
7 and in a reasonable manner, and if you fail to submit to such a
8 search, it will be grounds for revoking your supervised release
9 and sending you back to jail. You need to inform people that
10 you are living with that the premises may be subject to search
11 pursuant to this condition.

12 Certainly until the \$700 special assessment is paid,
13 you have to provide the probation officer with access to any
14 financial information that's requested. The government is
15 jumping up.

16 MR. BAUER: I was waiting my turn. I thought you
17 were --

18 THE COURT: I'm not done yet. Go ahead.

19 MR. BAUER: I think it's relevant to the terms for his
20 supervised release. It has to do with orders of protection
21 with regards to Mr. Roper. They are listed on page 17 of the
22 PSR. So I guess I do have a factual objection that I didn't
23 mention earlier, which is the orders of protection related to
24 his family members, his mother Deborah Clayton, Anthony Clayton
25 and Anthony Roper. I have been told by a Yonkers police

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1 detective who spoke with a assistant district attorneys in
2 Westchester County, that those have been lifted and removed. I
3 am sorry that I don't have firsthand knowledge of that, but at
4 a minimum I wanted to put that on the record.

5 More importantly, your Honor --

6 THE COURT: Ms. Caristillo --

7 MR. BAUER: -- has not been removed, and that is the
8 mother of his child.

9 THE COURT: Right.

10 MR. BAUER: So, I wanted to front that, because that
11 could be an issue for his release.

12 THE COURT: Well, as far as I'm concerned he has to
13 comply with any order of protection that's out there.

14 MR. BAUER: I agree, your Honor.

15 THE COURT: So, if there is an order of protection in
16 favor of Ms. Caristillo, don't you go anywhere near that lady.
17 Obviously arrangements have been made for you to see your
18 son -- or so I'm told -- while you were in jail. Those
19 arrangements are going to have to continue. You go near
20 Ms. Caristillo while there is an order of protection on you,
21 you are toast. I will have you back in jail so fast your head
22 will spin. And I mean it.

23 THE DEFENDANT: Can I say something, your Honor?

24 THE COURT: Say anything you like.

25 THE DEFENDANT: I don't want to go near her, but you

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1 know being that I'm getting my freedom back, I don't want
2 anything to do with her, this is my only fear right here. This
3 lady right here is my only fear. I'm not going to lie to you.
4 As you can see, we have multiple arrests because of her, and
5 probably I'm not going to lie, like probably two of them was
6 actual like, was right, but like the rest of them was false.
7 Q. Well, here is the way we avoid the problem. When you see
8 your son, it's going to have to be arranged by other people,
9 other people are going to have to pick him up, other people are
10 going to have to take him back. It's really, really important
11 that you not have any contact with her. It's really important,
12 critically important.

13 Now, if she is the kind of person who tries to have
14 contact with you, here is what I say. If she calls you, hang
15 up, don't talk to her. Hang up. If she sends you an e-mail,
16 tell your probation officer and change your e-mail address.
17 Tell your probation officer.

18 You know what, your probation officer is your first
19 line of defense. For the next five years you actually have a
20 line of defense. If she starts to bother you, tell your
21 probation officer right away. Say I have a problem, she is
22 reaching out to me, I don't want this, and then do what your
23 probation officer advises.

24
25 I can't think of a better piece of advice to give you,

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1 but it's very, very, very important that you not have contact
2 with this lady, because I don't know whether what she said when
3 you were arrested was true or was false. I don't know; I'm not
4 judging. But if you are correct, and she is out to get you,
5 you can do yourself no favors by trying to deal with her.
6 And if you get arrested on some kind of violation of an order
7 of protection, I don't care what they do in the Westchester
8 County court, or in the Westchester family court, you are not
9 going home from this court. So, stay away from the lady.

10
11 I note that the last order of protection was renewed a
12 year ago, and it's going to expire on January the 18th. The
13 probation office needs to know whether that order of protection
14 gets renewed.

15 OK. It is a special condition of your supervision
16 that you continue your cooperation with the government, if, as
17 and when required.

18 You are to report to the nearest probation office
19 within 72 hours from your release of custody, and I recommend
20 that you be supervised in your district of residence.

21 There is no forfeiture here, is there?

22 MR. BAUER: No, your Honor.

23 THE COURT: OK. Now, this is pursuant to a
24 cooperation agreement?

25 MR. BAUER: It is, your Honor.

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1 THE COURT: So, is there an appeal waiver?

2 MR. BAUER: There is no specific appeal waiver in the
3 cooperation agreement.

4 THE COURT: Correct, OK.

5 So, Mr. Roper, you have a right to take an appeal from
6 the sentence I have imposed upon you. You have a right to
7 counsel in connection with any appeal that you would choose to
8 file. And if you cannot afford a lawyer, one will be appointed
9 to represent you. Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: The first temptation you are going to have
12 to overcome is the temptation to celebrate. Don't. Have a
13 cupcake.

14 Mr. Neuman, anything else?

15 MR. NEUMAN: No, your Honor.

16 THE COURT: You really don't want to see me again, Mr.
17 Roper, except possibly at Nordstrom's. You don't want to see
18 me again, because I mean what I say, I mean business. I am a
19 zero tolerance judge. Don't tempt fate.

20 Anything else from the government?

21 MR. BAUER: Judge, the defendant pled to a superseding
22 information. The government would move to dismiss the counts
23 in the underlying indictment.

24 THE COURT: The underlying indictment is dismissed.

25 MR. BAUER: Thank you, your Honor.

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1 THE COURT: Good luck, sir.

2 MR. NEUMAN: Thank you, your Honor.

3 THE COURT: I hope I never see you again. These
4 proceedings are closed.

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